

APPENDIX D

DRAFT EASEMENT

WEST KINGSTON TOWN DUMP/URI DISPOSAL AREA SUPERFUND SITE

West Kingston Town Dump/URI Disposal Area SF Site

**DECLARATION OF COVENANTS AND ENVIRONMENTAL
PROTECTION/CONSERVATION AND ACCESS EASEMENT¹**

This Declaration of Covenants and Environmental Protection/Conservation and Access Easement ("Declaration") is made this ____ day of _____, 20____, by and between _____, ("Grantor"), having an address of _____, and the STATE OF RHODE ISLAND ("Grantee"), having an address of Rhode Island Department of Environmental Management, Office of Waste Management, 235 Promenade Street, Providence, Rhode Island 02908.

WITNESSETH:

1. WHEREAS, Grantor is the owner in fee simple of a parcel of land located in the Town of South Kingstown, Washington County, State of Rhode Island, more particularly described by the Class I survey attached hereto as Exhibit A and made a part hereof (the "Property"); and
2. WHEREAS, the State of Rhode Island (the "State") and the United States Environmental Protection Agency ("EPA") have determined that the Property and certain land in close proximity to the Property contain hazardous materials and other adverse environmental conditions; and
3. WHEREAS, the Property is part of the West Kingston Town Dump/URI Disposal Area Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 14, 1992; and
4. WHEREAS, three impermeable landfill caps were constructed on the Site in 2006 under State law (the "State Landfill Closure"); and
5. WHEREAS, in a Record of Decision dated September 28, 2006 (the "ROD"), the Deputy Director of EPA Region 1's Office of Site Remediation and Restoration selected a "remedial action" for the Site, which provides for the following actions (among others) at the Site:
 - a. Mixing of an oxidant solution into contaminated soil at a part of the Site called the Former Drum Storage Area;

¹ This is a form document for use in drafting restrictions and access easements at the West Kingston Town Dump/URI Disposal Area Superfund Site. The language in this document may be modified as it is applied to particular parcels with the approval of EPA and RIDEM.

b. Injection of chemical oxidants (such as sodium permanganate) in the vicinity of the Former Drum Storage Area through a series of injection wells, to reduce the concentration and mass of volatile organic compounds dissolved in the groundwater in this area;

c. Monitoring of dissolved constituents in groundwater near the Former Drum Storage Area and in downgradient areas, to verify the ability of natural attenuation processes to further reduce the concentration and mass of dissolved volatile organic compounds in this groundwater over time;

d. Implementation of deed restrictions (such as this Declaration) to prevent damage to and interference with the remedial action components and to restrict the use of groundwater before cleanup levels are achieved;

e. Long-term monitoring of surface water and groundwater, to determine effectiveness of the oxidation treatments and of monitored natural attenuation, and long-term monitoring of the caps installed under the State Landfill Closure;

f. Operation and maintenance activities throughout the life of the remedy; and

g. The performance of five-year reviews as required by statute.

6. WHEREAS, a consent decree was entered in the United States District Court for the District of Rhode Island on _____ ("Consent Decree") to resolve the case of U.S. and State of Rhode Island v. Town of Narragansett, RI, Town of South Kingstown, RI, the Rhode Island Board of Governors for Higher Education, and the University of Rhode Island, Civil Action No. ___, Docket No. ___; and

7. WHEREAS, the Consent Decree was recorded in the Records of Land Evidence for the Town of South Kingstown, Rhode Island at Book ___, Page ___; and

8. WHEREAS, the parties hereto have agreed, consistent with the Consent Decree, 1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment by protecting the remedial action which has been and will be taken at the Site; and

9. WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

10. Grant: For and in consideration of the terms of the Consent Decree and other good and valuable consideration paid and the agreements and promises hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, Grantor, on behalf of itself, its successors and assigns, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection/conservation easement pursuant to Title 34, Chapter 39 of the General Laws of Rhode Island, as amended, and an Access Easement, of the nature and character and for the purposes hereinafter set forth, with respect to the Property.

11. Purpose: It is the purpose of this Declaration to give the Grantee the right to implement and/or monitor the remedial action to assure that the Property will be used only for purposes which are compatible with the remedial action and to ensure that the Property will not be used in a manner that will pose a threat to human health or the environment.

12. Covenant, Conditions and Restrictions on Use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, and are binding on the Grantor and Grantor's heirs, successors, successors in title, and assigns:

a. Groundwater underlying the Property shall not be extracted, consumed, exposed or utilized in any way, except for the limited purpose of treating and monitoring groundwater contamination levels in accordance with plans approved by EPA and the State. Groundwater supply wells shall not be installed or utilized on any part of the Property, nor shall the hydrology of such groundwater be altered, except in accordance with plans approved by EPA and the State.

b. No use or activity shall be permitted on the Property, unless otherwise provided for in the Consent Decree, which may impede the construction or implementation of the remedial action or which will disturb any of the remedial measures implemented. Such remedial measures include, without limitation, the mixing of oxidants into the soil at the Former Drum Storage Area; injection of chemical oxidants into the groundwater in the vicinity of the Former Drum Storage Area; and the monitoring of groundwater and surface waters.

c. There shall be no disturbance of the surface or subsurface of the land by filling, drilling, excavation, removal of topsoil, rock or minerals, or change of the topography in any manner, except in accordance with plans approved by EPA and the State.

d. Surface water on and/or adjacent to the Property shall not be extracted, consumed, or utilized in any way, nor shall the surface water be altered

in any way so as to affect the hydrology of the groundwater underlying the Site, except in accordance with plans approved by EPA and the State.

e. The multi-layer caps installed as part of the State Landfill Closure shall not be disturbed in any manner, except in accordance with plans approved by EPA and the State, and shall be properly inspected and maintained in good condition, in accordance with the cap Operation and Maintenance Plan approved by EPA and the State.

f. No building or other development shall be built or undertaken without prior notice to EPA and the State.

13. Modification or Termination of Restrictions: The above covenants and restrictions may be modified or terminated, in whole or in part, in writing by the Grantee, subject to EPA's review and written concurrence. All expenses and costs of drafting and recording any modifications or terminations shall be borne by the Grantor. If requested by the Grantor, such writing will be executed by the Grantee in recordable form.

14. Environmental Protection/Conservation and Access Easement: Grantor hereby grants to the Grantee (and to the Grantee's agents, contractors, designees and assigns, including but not limited to EPA and the defendants to the Consent Decree) an irrevocable, permanent and continuing right of access at all reasonable times to the Property for the purposes of conducting any activity related to the Consent Decree, including but not limited to:

a. Implementing the response actions in the ROD, including but not limited to the mixing of oxidants into the soil at the Former Drum Storage Area; injection of chemical oxidants into the groundwater in the vicinity of the Former Drum Storage Area; and the monitoring of groundwater and surface waters;

b. Verifying any data or information submitted to EPA or the State;

c. Verifying that no action is being taken on the Property in violation of the terms of this Declaration or of any federal or state environmental laws or regulations;

d. Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, inspecting the caps installed as part of the State Landfill Closure and sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;

e. Assessing the need for, planning or implementing additional or new response actions at or near the Site;

f. Assessing implementation of quality assurance and quality control practices for the remedial action;

g. Implementing the activities required by the Consent Decree pursuant to the conditions set forth in Paragraph 95 of the Consent Decree;

h. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by the defendants to the Consent Decree or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;

i. Assessing compliance with the Consent Decree by the defendants to the Consent Decree; and

j. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that needs to be prohibited or restricted, by or pursuant to the Consent Decree.

15. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

16. No Limitation on Access: Nothing in this document shall limit or otherwise affect EPA's or the State of Rhode Island's or their agents' rights of entry and access provided by law or regulation or EPA's authority to take response actions under CERCLA, the NCP or other federal law.

17. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this Declaration.

18. Notice requirement: Grantor, and any person who subsequently acquires any interest in the Property, including, but not limited to, by deeds, leases, and mortgages, shall give (a) written notice of the Consent Decree and this Declaration to the person or entity that will receive the conveyance ("transferee"), and (b) written notice of the conveyance to Grantee and EPA, including the name and address of the transferee and the date on which the Grantor gave the notice to that transferee. Such transfer shall take place only if the transferee agrees, as a part of the agreement to purchase or otherwise obtain the Property, that it will comply with the obligations of the Grantor to provide access to the Property and with all of the declarations set forth herein. Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO THE EFFECT OF A DECLARATION OF
COVENANTS AND ENVIRONMENTAL
PROTECTION/CONSERVATION AND ACCESS
EASEMENT, DATED _____, _____, RECORDED IN**

**THE RECORDS OF LAND EVIDENCE FOR THE TOWN
OF SOUTH KINGSTOWN, RHODE ISLAND ON
_____, 20____, IN BOOK _____, PAGE _____, IN
FAVOR OF AND ENFORCEABLE BY THE STATE OF
RHODE ISLAND AND THE UNITED STATES OF
AMERICA AND THEIR SUCCESSORS AND ASSIGNS.**

The failure to include such a provision shall not affect the validity or applicability to the Property of this Declaration.

19. Copy of Notice. Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

20. Administrative jurisdiction: The Rhode Island Department of Environmental Management is the state agency having administrative jurisdiction over the interests acquired by the State of Rhode Island through this Declaration. The Director of the Rhode Island Department of Environmental Management or his or her delegatee shall exercise the discretion and authority granted to the State herein. If the State of Rhode Island assigns its interest(s) created by this Declaration, unless it provides otherwise in any such assignment document, the discretion and authority referred to in this paragraph shall also be assigned, unless otherwise provided in the assignment document, and a document evidencing same shall be recorded with the Records of Land Evidence of the Town of South Kingstown, Rhode Island.

21. Enforcement: The Grantee shall be entitled to enforce the terms of this Declaration by resort to specific performance or legal process. All reasonable costs and expenses of the Grantee, including but not limited to attorneys' fees, incurred in any such enforcement action shall be borne by the Grantor or its successors in interest to the Property. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including those provided under CERCLA. Enforcement of the terms of this Declaration shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this Declaration in the event of a breach of any term of this Declaration shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this Declaration. EPA is a third-party beneficiary to this Declaration and is entitled to all the rights and privileges accorded to third-party beneficiaries under Rhode Island law, including enforcement rights.

22. Damages: Grantee shall be entitled to recover damages for violations of the terms of this Declaration, or for any injury to the remedial action, to the public or to the environment protected by this Declaration.

23. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription against the United States or the State of Rhode Island in

any action taken to enforce the terms of this Declaration. In accordance with the Rhode Island General Laws, Title 34, Chapter 39, entitled, "Conservation and Preservation Restrictions on Real Property," no provision of this Declaration shall be unenforceable on account of (i) lack of privity of estate or contract, (ii) lack of benefit to a particular land, (iii) the benefit being assignable or being assigned to any governmental body or to any entity with like purposes, or (iv) any other doctrine of property law which might cause the termination of the provision.

24. Covenants: Grantor, for itself and for its heirs, successors, successors in title, assigns, executors, and administrators, hereby covenants to and with the Grantee and its assigns that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to grant and convey the above easement, covenants, and land use restrictions, that the Property is free and clear of encumbrances, except those noted on **Exhibit B** attached hereto, that the Grantee and its assigns shall at all times hereafter peacefully and quietly have and enjoy the granted interest in the Property, and that the Grantor and its heirs, successors, successors in title, assigns, executors and administrators shall warrant and defend the premises to the Grantee and its assigns forever against the lawful claims and demands of all persons.

25. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first-class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

Gary Jablonski, Project Coordinator
Rhode Island Department of Environmental Management
Division of Site Remediation
235 Promenade Street
Providence, RI 02908

To EPA:

Anna Krasko, Remedial Project Manager (HBO)
West Kingston Town Dump/URI Disposal Area Superfund Site
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

To Settling Defendants named in the Consent Decree:

Town Manager
Town of South Kingstown
180 High Street

Wakefield, RI 02879

Town Manager
Town of Narragansett
25 Fifth Avenue
Narragansett, RI 02882-0777

University of Rhode Island and Rhode Island Board of Governors for Higher Education
[supply address]

26. General provisions:

a. Governing law: The interpretation and performance of this Declaration shall be governed by the laws of the United States or, if there is no applicable federal law, by the law of Rhode Island.

b. Definitions: Any provision or term not otherwise defined in this Declaration shall have the meaning set forth in the Consent Decree and the appendices to the Consent Decree.

c. Liberal construction: Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of the grant to effect the purpose of this Declaration and the policy and purpose of CERCLA. If any provision of this Declaration is found to be ambiguous, an interpretation consistent with the purpose of this Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid.

d. Limitations: Nothing in this Declaration shall be construed to transfer liability for environmental conditions on the Property to Grantee or the EPA.

e. Severability: If any provision of this Declaration, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

f. Entire Agreement: This Declaration sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

g. No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

h. Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this Declaration upon them shall be joint and several.

i. Successors: The covenants, terms, conditions, and restrictions of this Declaration shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, successors in title and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor," wherever used herein, and any pronouns used in place thereof, shall include the person and/or entity named at the beginning of this document and identified as "Grantor" and its personal representatives, heirs, successors, and assigns. The term "Grantee," wherever used herein, and any pronouns used in place thereof, shall include the State of Rhode Island and its personal representatives and assigns. The rights of the Grantee and Grantor under this Declaration are freely assignable, subject to the notice provisions hereof. Any transferee of the fee title to the Property or any leasehold interest in the Property shall automatically be deemed, by acceptance of such interest, to have acquired such title or interest subject to the restrictions contained or referred to in this Declaration and to have agreed to execute any and all instruments reasonably necessary to carry out the provisions of this Declaration. Consistent with Title 34, Chapter 39-3(c) of the General Laws of Rhode Island, the rights and obligations under this Declaration shall not be subject to a 30-year limitation on restrictive covenants.

j. Termination of Rights and Obligations: A party's rights and obligations under this Declaration terminate upon transfer of the party's interest in the Easement or Property, except that (i) liability for acts or omissions occurring prior to the transfer shall survive the transfer; (ii) the transfer shall in no way alter the obligations under the Consent Decree of the Settling Defendants who are parties to that Consent Decree; and (iii) the transfer shall not affect the Grantee's rights under this Easement.

k. Captions: The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon construction or interpretation.

l. Counterparts: The parties may execute this Declaration in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Grantee and Grantee's personal representatives and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Declaration to be executed by its duly authorized representative this _____ day of _____, 200__.

WITNESS:

[Name of Grantor]

By: _____

Its: _____

STATE OF RHODE ISLAND) ss
COUNTY OF WASHINGTON)

On this __ day of _____, 200 __, before me, the undersigned, a Notary Public in and for the State of Rhode Island, duly commissioned and sworn, personally appeared _____ of _____, known by me to be the party so executing the foregoing instrument, and acknowledged the said instrument to be his free act and deed in said capacity and the free act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the
State of Rhode Island
My Commission Expires: _____.

IN WITNESS WHEREOF, Grantee hereby acknowledges its acceptance of the above-described property interest (e.g., use restrictions and environmental conservation/protection and access easement) by its duly authorized representative this _____ day of _____, 200__.

WITNESS:

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

By: _____
W. Michael Sullivan, Ph.D., Director

STATE OF RHODE ISLAND) ss
COUNTY OF WASHINGTON)

On this __ day of _____, 20 __, before me, the undersigned, a Notary Public in and for the State of Rhode Island, duly commissioned and sworn, personally appeared W. Michael Sullivan, Ph.D., Director for Air, Waste & Compliance of Rhode Island

Department of Environmental Management ("RIDEM"), known by me to be the party so executing the foregoing instrument for and on behalf of RIDEM, and acknowledged the said instrument to be his free act and deed in said capacity and the free act and deed of RIDEM, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the
State of Rhode Island
My Commission Expires: _____

Approved this _____ day of _____, 2007, by the Rhode Island State
Properties Committee

APPROVED AS TO
TERMS AND CONDITIONS:

Chairman, State Properties Committee

APPROVED AS TO FORM:

Attorney General

APPROVED AS TO SUBSTANCE:

Director of Administration

APPROVED:

Public Member, State Properties Committee

Attachments:	Exhibit A	-	legal description of the Property
	Exhibit B	-	list of permitted title encumbrances